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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 RONALD T. MONTEZ,

12 Plaintiff,

13 v.

14 SCOTT R. JONES, et al.,

15 Defendants.
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No. 2:20-cv-1681-JAM-EFB P

ORDER

17 Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C.
18 § 1983, seeks to proceed in forma pauperis. ECF No. 2. For the reasons stated hereafter, his
19 application to proceed in forma pauperis is granted and his complaint is dismissed with leave to
20 amend.

21 Application to Proceed In Forma Pauperis

22 The court has reviewed plaintiff's application (ECF No. 2) and finds that it makes the
23 showing required by 28 U.S.C. § 1915(a)(1). Accordingly, by separate order, the court directs the
24 agency having custody of plaintiff to collect and forward the appropriate monthly payments for
25 the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

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Screening

I. Legal Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)). While the complaint must comply with the “short and plain statement” requirements of Rule 8, its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at 678.

Furthermore, a claim upon which the court can grant relief must have facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

1 II. Analysis

2 The gist of plaintiff's complaint is that from February 12, 2016 to December 10, 2019,
3 while confined to a Sacramento County Jail, a "cyber crime task force" terrorized plaintiff and
4 deprived him of sleep through "remote neuro monitoring." ECF No. 1. In addition to the two
5 Doe defendants who allegedly administered this "shock" therapy to plaintiff, plaintiff names as
6 defendants Sacramento County District Attorney Anne Shubert and Sacramento County Sheriff
7 Scott Jones. As discussed below, plaintiff's complaint cannot survive screening.

8 The claim against defendant Schubert fails because (1) plaintiff has not alleged how she
9 was personally involved in a violation of plaintiff's federal constitutional or statutory rights, and
10 (2) prosecutors are absolutely immune from civil suits for damages under § 1983 which challenge
11 activities related to the initiation and presentation of criminal prosecutions. *Imbler v. Pachtman*,
12 424 U.S. 409, 427-28 (1976). Similarly, with respect to defendant Jones, plaintiff has not alleged
13 that Jones was personally involved in violating plaintiff's rights. To the extent plaintiff wishes to
14 pursue a claim against Sacramento County, he must demonstrate that he suffered an injury caused
15 by employees acting pursuant to the municipality's policy or custom. *Mt. Healthy City Sch. Dist.*
16 *Bd. of Ed. v. Doyle*, 429 U.S. 274, 280 (1977); *Monell v. New York City Dep't of Soc. Servs.*, 436
17 U.S. 658, 691 (1978); *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 964 (9th Cir. 2008).
18 Here, plaintiff has neither identified a County policy, nor alleged harm caused by such a policy.

19 As for the Doe defendants, the allegations are extravagant. But assuming plaintiff could
20 state a claim, there is no showing in the allegations that any defendant administered the remote
21 neuro monitoring for the purpose of causing plaintiff harm. A prison official violates the Eighth
22 Amendment's proscription of cruel and unusual punishment where he or she deprives a prisoner
23 of the minimal civilized measure of life's necessities with a "sufficiently culpable state of mind."
24 *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *see also Matthews v. Holland*, Case No. 1:14-cv-
25 01959-SKO (PC), 2017 U.S. Dist. LEXIS 42581, at *8 (E.D. Cal. Mar. 22, 2017) ("Conditions
26 which result in chronic, long term sleep deprivation may support a claim under the Eighth
27 Amendment."). If plaintiff chooses to file an amended complaint, he shall note that to state an
28 Eighth Amendment claim, he must allege facts showing that (1) the defendant official's conduct

1 deprived him of the minimal civilized measure of life's necessities and (2) that the defendant
2 acted with deliberate indifference to his health or safety. *Id.* at 834. Moreover, the proper
3 procedure for identifying "doe" defendants is by filing a motion to amend along with a proposed
4 amended complaint that is complete in itself without reference to any prior pleading. If plaintiff
5 has identified specific individuals against whom he wishes to assert claims, he must identify them
6 in an amended complaint.

7 III. Leave to Amend

8 Plaintiff is cautioned that any amended complaint must identify as a defendant only
9 persons who personally participated in a substantial way in depriving him of his constitutional
10 rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the
11 deprivation of a constitutional right if he does an act, participates in another's act or omits to
12 perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also
13 include any allegations based on state law that are so closely related to his federal allegations that
14 "they form the same case or controversy." *See* 28 U.S.C. § 1367(a).

15 The amended complaint must also contain a caption including the names of all defendants.
16 Fed. R. Civ. P. 10(a).

17 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*
18 *George v. Smith*, 507 F.3d 605 at 607.

19 Any amended complaint must be written or typed so that it so that it is complete in itself
20 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
21 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
22 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
23 F.3d 1467, 1474 (9th Cir. 1997) (the "'amended complaint supersedes the original, the latter
24 being treated thereafter as non-existent.'" (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
25 1967))).

26 Any amended complaint should be as concise as possible in fulfilling the above
27 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual
28 background which has no bearing on his legal claims. He should also take pains to ensure that his

1 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing
2 and organization. Plaintiff should carefully consider whether each of the defendants he names
3 actually had involvement in the constitutional violations he alleges. A “scattershot” approach in
4 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

5 Conclusion

6 Accordingly, it is ORDERED that

- 7 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 8 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
9 in accordance with the notice to the California Department of Corrections and
10 Rehabilitation filed concurrently herewith;
- 11 3. Plaintiff’s complaint (ECF No. 1) is DISMISSED with leave to amend within 30
12 days from the date of service of this order; and
- 13 4. Failure to file an amended complaint that complies with this order may result in
14 the dismissal of this action for the reasons stated herein.

15 DATED: September 29, 2020.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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